

Senate File 2330 - Introduced

SENATE FILE 2330

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 2309)

(SUCCESSOR TO SSB 3178)

A BILL FOR

1 An Act relating to retailers maintaining a place of business
2 in this state for purposes of the collection of sales and
3 use taxes, agreements relating to the collection of sales
4 and use taxes in the state, and sales of tangible personal
5 property and services to the state.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 423.1, subsection 47, Code Supplement
2 2011, is amended to read as follows:

3 47. "Retailer" means and includes every person engaged in
4 the business of selling tangible personal property or taxable
5 services at retail, or the furnishing of gas, electricity,
6 water, or communication service, and tickets or admissions
7 to places of amusement and athletic events or operating
8 amusement devices or other forms of commercial amusement from
9 which revenues are derived and includes but is not limited to
10 every retailer maintaining a place of business in this state.
11 However, when in the opinion of the director it is necessary
12 for the efficient administration of this chapter to regard
13 any salespersons, representatives, truckers, peddlers, or
14 canvassers as agents of the dealers, distributors, supervisors,
15 employers, or persons under whom they operate or from whom they
16 obtain tangible personal property sold by them irrespective of
17 whether or not they are making sales on their own behalf or on
18 behalf of such dealers, distributors, supervisors, employers,
19 or persons, the director may so regard them, and may regard
20 such dealers, distributors, supervisors, employers, or persons
21 as retailers for the purposes of this chapter. "Retailer"
22 includes a seller obligated to collect sales or use tax.

23 Sec. 2. Section 423.1, subsection 48, Code Supplement 2011,
24 is amended to read as follows:

25 48. a. "Retailer maintaining a place of business in this
26 state" or any like term includes any retailer having or
27 maintaining within this state, directly or by a subsidiary,
28 an office, distribution house, sales house, warehouse, or
29 other place of business, or any representative operating
30 within this state under the authority of the retailer or its
31 subsidiary, irrespective of whether that place of business or
32 representative is located here permanently or temporarily, or
33 whether the retailer or subsidiary is admitted to do business
34 within this state pursuant to chapter 490.

35 b. (1) A retailer shall be presumed to be maintaining a

1 place of business in this state, as defined in paragraph "a", if
2 any person that has substantial nexus in this state, other than
3 a person acting in its capacity as a common carrier, does any
4 of the following:

5 (a) Sells a similar line of products as the retailer and
6 does so under the same or similar business name.

7 (b) Maintains an office, distribution facility, warehouse,
8 storage place, or similar place of business in this state to
9 facilitate the delivery of property or services sold by the
10 retailer to the retailer's customers.

11 (c) Uses trademarks, service marks, or trade names in this
12 state that are the same or substantially similar to those used
13 by the retailer.

14 (d) Delivers, installs, assembles, or performs maintenance
15 services for the retailer's customers.

16 (e) Facilitates the retailer's delivery of property to
17 customers in this state by allowing the retailer's customers to
18 take delivery of property sold by the retailer at an office,
19 distribution facility, warehouse, storage place, or similar
20 place of business maintained by the person in this state.

21 (f) Conducts any other activities in this state that
22 are significantly associated with the retailer's ability
23 to establish and maintain a market in this state for the
24 retailer's sales.

25 (2) The presumption established in this paragraph may be
26 rebutted by a showing of proof that the person's activities in
27 this state are not significantly associated with the retailer's
28 ability to establish or maintain a market in this state for the
29 retailer's sales.

30 **Sec. 3. NEW SECTION. 423.13A Administration —**
31 **effectiveness of agreements with retailers.**

32 1. Notwithstanding any provision of this chapter to the
33 contrary, any ruling, agreement, or contract, whether written
34 or oral, express or implied, entered into after the effective
35 date of this Act between a retailer and a state agency which

1 provides that a retailer is not required to collect sales and
2 use tax in this state despite the presence in this state of
3 a warehouse, distribution center, or fulfillment center that
4 is owned and operated by the retailer or an affiliate of the
5 retailer shall be null and void unless such ruling, agreement,
6 or contract is approved by a majority vote of both houses of
7 the general assembly.

8 2. For purposes of this section, "*state agency*" means
9 the executive branch, including any executive department,
10 commission, board, institution, division, bureau, office,
11 agency, or other entity of state government. "*State agency*"
12 does not mean the general assembly, or the judicial branch as
13 provided in section 602.1102.

14 Sec. 4. Section 423.36, Code 2011, is amended by adding the
15 following new subsection:

16 NEW SUBSECTION. 1A. a. Notwithstanding subsection 1,
17 if any person will make taxable sales of tangible personal
18 property or furnish services to any state agency, that person
19 shall, prior to the sale, apply for and receive a permit
20 to collect sales or use tax pursuant to this section. A
21 state agency shall not purchase tangible personal property
22 or services from any person unless that person has a valid,
23 unexpired permit issued pursuant to this section and is in
24 compliance with all other requirements in this chapter imposed
25 upon retailers, including but not limited to the requirement to
26 collect and remit sales and use tax and file sales tax returns.

27 b. For purposes of this subsection, "*state agency*" means
28 any executive, judicial, or legislative department, commission,
29 board, institution, division, bureau, office, agency, or other
30 entity of state government.

31 EXPLANATION

32 This bill relates to the collection of sales and use taxes
33 by retailers maintaining a place of business in this state,
34 agreements relating to the collection of sales and use taxes,
35 and sales of tangible personal property and services to state

1 agencies.

2 A retailer located in this state, or maintaining a place of
3 business in this state, must collect and remit sales and use
4 taxes to the department of revenue. Currently, as defined in
5 Code section 423.1, the term "retailer maintaining a place of
6 business in this state" includes certain places of business,
7 and representatives operating under the authority of the
8 retailer.

9 The bill provides that a retailer will be presumed to be
10 maintaining a place of business in this state if any person
11 that has substantial nexus in this state, other than a common
12 carrier, engages in any of six activities specified in the
13 bill. The presumption may be rebutted by a showing of proof
14 that the person's activities are not significantly associated
15 with the retailer's ability to establish or maintain a market
16 in this state for the retailer's sales.

17 The bill amends the definition of "retailer" in Code section
18 423.1 to specify that it includes a retailer maintaining a
19 place of business in this state.

20 The bill provides that any ruling, agreement, or contract
21 entered into after the effective date of the bill between a
22 retailer and a state agency which provides that a retailer is
23 not required to collect sales and use tax in this state despite
24 the presence in this state of a warehouse, distribution center,
25 or fulfillment center owned and operated by the retailer or
26 an affiliate shall be null and void unless it is specifically
27 approved by a majority vote of both houses of the general
28 assembly. For purposes of this provision of the bill, "state
29 agency" does not include the general assembly or the judicial
30 branch.

31 The bill provides that no person shall make taxable sales or
32 furnish taxable services to a state agency unless that person
33 obtains a sales tax permit. Also, the state is prohibited
34 from purchasing taxable property or services from any person
35 unless that person has a valid, unexpired sales tax permit and

1 is in compliance with all other sales tax laws imposed upon
2 retailers. For purposes of this provision of the bill, "state
3 agency" includes the executive branch, the general assembly,
4 and the judicial branch.